No. 89-826

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE,
a California corporation,

Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION SEVEN

BRIEF OF AMICUS CURIAE OF THE CALIFORNIA ASSOCIATION OF REALTORS® IN SUPPORT OF PETITIONER

WILLIAM M. PFEIFFER,
Vice President and General Counsel*

JUDITH K. HERZBERG, Senior Counsel
CALIFORNIA ASSOCIATION OF REALTORS®

525 South Virgil Avenue
Los Angeles, California 90020
(213) 739-8200

Attorneys for Amicus Curiae

*Counsel of Record

Lawyers Brief Service / Legal Printers / (213) 383-4457 / (714) 720-1510

No. 89-826

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE,
a California corporation,

Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION SEVEN

BRIEF OF AMICUS CURIAE OF THE CALIFORNIA ASSOCIATION OF REALTORS® IN SUPPORT OF PETITIONER

WILLIAM M. PFEIFFER,
Vice President and General Counsel*

JUDITH K. HERZBERG, Senior Counsel
CALIFORNIA ASSOCIATION OF REALTORS®

525 South Virgil Avenue
Los Angeles, California 90020
(213) 739-8200

Attorneys for Amicus Curiae

*Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitutions:

Other Authorities:

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE, A CALIFORNIA CORPORATION,

Petitioner,

vs.

COUNTY OF LOS ANGELES, CALIFORNIA,

Respondent.

INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 36, the California Association of REALTORS® respectfully submits this brief amicus curiae in support of Petitioner, First English Evangelical Lutheran Church of Glendale.

Amicus curiae California Association of REALTORS® (C.A.R.) is a voluntary trade association whose members consist of Boards of REALTORS® in California and those persons licensed by the state of California as real estate brokers and salespersons who are members of local boards. C.A.R. is the largest state trade association in the United States and has 180 affiliated Boards of REALTORS® and over 135,000 members.

The mission of C.A.R. is to serve in developing and promoting programs and services that will enhance the members' freedom and ability to conduct their individual businesses successfully with integrity and competency. Moreover, C.A.R. serves to promote, through collective action, the preservation of private property rights.

The California appellate courts need guidance from this Court in determining when a regulatory taking so undermines private property rights that compensation under the U.S. Constitution is required. The California rule, if this case is allowed to stand, will allow municipalities to impose land use regulations that effectively deprive a private property landowner of all reasonable use of his property without any viable remedy.

With the extensive proliferation of land use regulatory programs that greatly restrict the use to which private property may be put, C.A.R., its members and all the property owners they represent have a significant interest in the outcome of this case and the law it establishes.

SUMMARY OF THE ARGUMENT

In 1986, when this case was briefed on the remedy issue, we noted that this Court was not presented with the broad question of establishing constitutional standards for determining whether a land use regulation constitutes a de facto taking of private property. With this second phase of the case, it is.

The California appellate court, in applying the guidelines set forth by this Court, has ruled that a regulatory taking only occurs if all reasonable use of property is denied. Further, in its opinion is an analysis

that would effectively result in no regulatory taking if property is taken for public safety. This Court has declared over the years that there is no set formula for defining when a regulatory taking occurs. The California appellate court's decision in this case would make it extremely difficult, if not impossible, to find a regulatory taking and will result in a great injustice to property owners specifically and society as a whole.

Counsel for C.A.R. are familiar with the questions involved and the scope of their presentation and believe that further argument on the issues discussed by this amicus brief will be helpful to this Court.

ARGUMENT

I. WHEN REGULATORY IMPOSITIONS HAVE THE SAME EFFECT AS PHYSICAL INVASIONS, COMPENSATION MUST BE PAID.

In September, 1789, Congress adopted the Bill of Rights, which was sent to the states for ratification. Of the twelve amendments sent, ten were ratified including what today is the Fifth Amendment. It is only fitting and proper that as we begin our national celebration of the two hundredth year of the Bill of Rights, this Court continue in its well reasoned efforts to assist the citizens of this country in determining what those rights are that are so zealously guarded.

It is axiomatic that the Bill of Rights generally, and the Just Compensation Clause of the Fifth Amendment specifically, was adopted to protect individuals from

majoritarian oppression.[1] As is always the case, it is this Court's duty to apply the principles encompassed in the Constitution to facts as they exist today, two hundred years later. In 1789, the framers did not conceive of the highly sophisticated bureaucratic land use regulatory system that exists today. In 1789, land was actually "taken" for public use.[2] Today, faced with ever diminishing tax revenues, governmental entities find it more economically "acceptable" to turn to land use regulation than eminent domain to accomplish the same goal. Why buy a park when it can be had by merely zoning land "open space?"

---

[1]*See generally* L. Tribe, *American Constitutional Law* 587 et seq. (2nd Ed. 1988). The Fifth Amendment deals "with the idea that government must respect 'vested rights' in property and contract--that certain settled expectations of a focused and crystallized sort should be secure against governmental disruption, at least without appropriate compensation."

[2]*See, e.g.*, the case *Reichert v. Felps*, 73 U.S. (6 Wall.) 160 (1868), in which the U.S. Government under the authority of the Judiciary Act of 1789 invalidated patents by the Governor of the Northwest Territories in favor of later issued U.S. patents. The Supreme Court had to reverse the lower courts' decisions and restore the property to Felps.

The evolution of "regulatory taking" law has been, by this Court's own admission,[3] less than clear and concrete as one might expect, given the case-by-case analysis that is required. Currently, the most clearly stated judicial guide for determining whether a regulation constitutes a taking is that there is no "set formula." In case after case, the judiciary has avoided pronouncing distinct, concrete guidelines for such a determination.[4] Instead, this Court has pronounced that "there is no set formula to determine when a taking occurs," and has repeatedly noted that "[t]he question of what constitutes a 'taking' for purposes of the Fifth Amendment has proved to be a problem of considerable difficulty." *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123 (1978).

Admittedly, it would be difficult, if even possible, to develop a set formula for every case to determine when a regulation becomes a taking. However, the Court in this case has the opportunity to clarify guiding principles mentioned, but not fully explained, in regulatory takings cases for sixty-eight years. In all the cases since the 1922

---

[3]*See Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979); *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980); *San Diego Gas & Elec. Co. v. San Diego* 450 U.S. 621 (1981); *Agins v. City of Tiburon* 447 U.S. 255 (1980); *Nollan v. California Coastal Comm'n*, 438 U.S. 825 (1986); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987)

[4]See footnote 3.

Pennsylvania Coal case, perhaps none has set forth a regulatory takings doctrine with any more clarity than Justice Holmes' statement that "[w]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

Petitioner brings this case before this esteemed Court because the courts in California need further guidance in interpreting the Fifth Amendment of the U.S. Constitution. Planners and property owners alike as well as their respective counsel have reviewed the cases from the 1987 term[5] and many of the law reviews[6] in light of

---

[5]*First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987); *Nollan v. California Coastal Comm'n*, 438 U.S. 825 (1987); *Keystone Bituminous Coal Ass'n v. DeBenedictis* 480 U.S. 470 (1987)

[6]Salsich Jr., *Keystone Bituminous Coal, First English and Nollan: A Framework for Accommodation?* 34 J. of Urb. and Contemp. L. 173 (1988); Symposium: *Land-Use, Zoning and Linkage Requirements Affecting Pace of Urban Growth*, 20 Urban Lawyer 413; Sussna, *The Concept of Highest and Best Use Under Takings Theory*, 21 The Urban Lawyer 113 (1989); Symposium: *Utilitarian Balancing and Formalism in Takings*, 88 Colum. L. Rev. 1581 (1988); Peterson, *Land Use Regulatory "Takings" Revisited: The New Supreme Court Approaches*, 39 Hastings L.J. 335 (1988); *see also* footnote 15 and cases cited therein.

previous cases dealing with regulatory takings[7] and still they are in a quandary.

This Court has consistently reiterated the rule set forth in *Pennsylvania Coal* that a regulation that goes "too far" can be a taking, but the definition of "too far" remains unclear.

In evaluating the character of an alleged regulatory "taking" action, this Court has observed that it is necessary to apply the multifactor balancing test which has appeared in taking cases since *Penn Central* and includes "such factors as the character of the governmental action, its economic impact and its interference with reasonable investment-backed expectations." *PruneYard* at 83.

However, when this Court analyzes a physical "taking" (whether it results from a regulation or not) the standard is much more relaxed:

> When "the character of the governmental action" (cite omitted) is a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.

Loretto at 434-435.

Unlike the physical takings analysis, regulatory takings analysis involves a balancing of factors to determine what is "too far" as was noted by Chief Justice Rehnquist in his dissent in *Keystone*.

---

[7]*See* footnote 3.

> ...we have recognized that regulations--unlike physical invasions--do not typically extinguish the "full bundle" of rights in a particular piece of property....This characteristic of regulations frequently makes unclear the breadth of their impact on identifiable segments of property, and has required that we evaluate the effects in light of the "several factors" enumerated in *Penn Central Transportation Co....*

Keystone dissent at 516.

In *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), although unable to decide on the merits of the case because of procedural deficiencies, this Court made a statement that could be construed to clarify the concept of "too far" as "that point at which a regulation becomes so onerous that it has the same effect as an appropriation of the property through eminent domain or physical possession." *Id.* at 199. *See also Pennsylvania Coal* at 413.

The guidance of this Court is needed to assist all interested parties in better understanding when a regulation goes "too far," and to avoid the inequities that occur from a rule that seems to allow compensation for a minor physical invasion but not for a regulatory imposition that leaves only the barest of rights.

If the County of Los Angeles had determined that the most effective method of handling the water runoff was to put in a flood control channel through Petitioner's property, the appellate court seemingly, by applying the guidelines of the Court vis-a-vis physical takings, would

have little difficulty in finding a taking of private land for public use requiring just compensation.

The County of Los Angeles, however, has accomplished the same thing by prohibiting reasonable use of the property, thereby creating a natural runoff.

Why should the standard of analysis be different for the two approaches available to the County? This Court has found a taking when a cable is stretched across the roof of a building pursuant to an ordinance[8] but not when 27 million tons of coal are prohibited by ordinance from being mined.[9] Given these two extremes, what governmental entity would choose the *Loretto* approach when the *Keystone* approach is available?

The Petitioner, in fact, is damaged far greater by the County's choice. If it had chosen to put in a channel (designed, of course, to blend with the natural setting), Petitioner would then presumably be entitled to use the rest of its property for its intended purpose with access restricted only to the runoff channel itself; not an uncommon situation. The diminution in value, although present, would be less and would be compensable.

The Petitioner's property under the County's choice is rendered virtually valueless. Who would want to own or pay money for land that is useful only for cooking meals (without a kitchen, of course), playing games, giving lessons (outdoors, of course: query, what if it rains?) and pitching tents (the ordinance states that one

---

[8]*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)

[9]*Keystone Bituminous Coal Ass'n v. DeBenedictis* 480 U.S. 470 (1987)

can not place a structure in the flood protection area so even pitching tents is suspect)? These minimal uses and lack of economic value, based on the County's decision to declare the property a "flood protection area," and the method it chose to accomplish that, must be a regulatory taking pursuant to the Fifth Amendment.

II. THE PUBLIC AT LARGE, RATHER THAN THE INDIVIDUAL PROPERTY OWNER, SHOULD BEAR THE COST OF PUBLIC IMPROVEMENTS WHEN THE BURDEN ON THE INDIVIDUAL IS MORE AND DIFFERENT THAN THAT ON THE PUBLIC.

In determining when there is a "taking," both courts and commentators agree that an individual property owner should not be forced alone to bear the burdens of providing a public benefit. This Court has consistently recognized that one of the principal purposes of the Fifth Amendment is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."[10]

---

[10]*Nollan v. California Coastal Comm'n*, 438 U.S. 825, 835, n.4 (1986); *San Diego Gas & Elec. Co. v. San Diego* 450 U.S. 621, 656 (1981) (Brennan, J., dissenting); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123 (1978); *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 83 (1980).

In *Agins v. City of Tiburon* 447 U.S. 255 (1980), the Court restated the principle of shifting burdens based on fairness:

> The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. *Id.* at 260.

An analysis of the *Agins* case demonstrates that important factors included not only the legitimate state interest,[11] but also the degree of reasonable investment backed expectations (Agins was planning to develop raw land for residential purposes); the reciprocity of advantage (similarly situated properties were likewise affected); the prevention of beneficial use of the property; and the degree to which a fundamental attribute of ownership is extinguished (Agins could still use the land for less dense residential purposes).

In contrast, application of the rule to this case shows that despite the fact there is indeed a legitimate governmental interest, the Church has more than a mere expectation of use, it has decades of vested use. There is no land or profit speculation involved. Because of its location, Petitioner's property is more affected than others by the moratorium. Not only has best use, but

---

[11]But see *Nollan* in which this Court stated that "our cases describe the condition for abridgement of property rights through the police power as a substantial advanc[ing] of a legitimate state interest. *Nollan* at 841.

practically all use (an essential ownership attribute) has been denied.

The government's goal of preventing harm to property and life in the instant case is laudable. Surely, it is within the government's police power to attain such an end, however, as was noted by one commentator, "since some losses can be imposed constitutionally, the problem for takings jurisprudence is to decide when an individual has borne more than his or her 'just share of the burdens of government.'"[12]

Chief Justice Rehnquist, in his dissent in *Keystone*, perhaps most succinctly stated the goal of the Fifth Amendment.

> Though...the Fifth Amendment does not prevent actions that secure a 'reciprocity of advantage,' ...it is designed to prevent "the public from loading upon one individual more than his just share of the burdens of government, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him."

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 512 (1987) (citing *Monogahela Navigation Co. v. United States*, 148 U.S. 312, 325 (1893)).

In determining the burden on the Church it is helpful to explore the cost to the Church to meet the purpose it

---

[12]Rose-Ackerman, *Against Ad Hocery: A Commentary on Michelman*, 88 Colum. L. Rev. 1697, 1708 (1988)

set out to accomplish decades ago, and in fact did accomplish until the moratorium.

In operation was a convention center, a retreat for its parishioners. A place for handicapped children to get away from the city. A place of reflection. To serve all parishioners of varying age and agility, buildings are required, including a chapel for worship.

To accomplish this purpose, the Church must now purchase other land in the mountains, but not in a similarly protected zone owned by the government (much of the land in the mountains above Los Angeles is owned by the Federal government). The available land is perhaps beyond the financial reach of the Church because of the economics of supply and demand. While encumbered with land that is for all practical purposes unusable, but still requires an ongoing debt service, the Church must find property to accomplish its purpose. This financial burden on the Church is disproportionately heavy compared to the burden on the public at large in Los Angeles County which frequently adds flood control facilities to its sprawling flood control infrastructure. For decades, the populous of Los Angeles County has been served by a flood control system that has, with great success, protected life and property from major destruction. Compensating the church and passing this cost on to the 8,650,300 people of Los Angeles County[13] is the only fair and just thing to do.

---

[13]Dept. of Finance, State of California, *Population Estimates of California Cities and Counties January 1, 1988 to January, 1, 1989* (May, 1989)

> In the words of Justice Holmes:
> We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.

Pennsylvania Coal at 416.

III. THERE IS A NEED FOR THIS COURT TO MORE ADEQUATELY DEFINE "ECONOMICALLY VIABLE USE" WHICH MUST INCLUDE REASONABLE INVESTMENT-BACKED EXPECTATIONS

Of particular importance in this case because of their use in previous cases are the terms "economically viable use"[14] and "reasonable investment-backed expectations."[15]

---

[14]*Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978); *Kaiser Aetna v. United States*, 444 U.S. 164, 174, n.8 (1979); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 834 (1987); *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485 (1987); *Williamson County Regional Planning Commn. v. Hamilton Bank*, 473 U.S. 172 (1985).

[15]*Penn Central*, 438 U.S. 104; *Andrus v. Allard*, 444 U.S. 51 (1979); *Kaiser Aetna*, 444 U.S. 164; *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984); *Williamson County*, 473 U.S. 172; *Keystone*, 480

Unfortunately, case law creates an ambiguous picture of what these concepts actually mean in today's regulatory takings arena.

This Court has discussed the economic harm of a governmental action in many ways since 1922, for example.

> a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a 'taking'.

Penn Central at 127.

> (a)ny intelligible takings inquiry must also ask whether the extent of the state's interference is so severe as to constitute a compensable taking in light of the owner's alternative uses for the property.

Loretto at 453.

> We have held that land use regulation can effect a taking if it 'does not substantially advance legitimate state interests,'.... or denies an owner economically viable use of his land...

Keystone at 495 citing *Agins v. Tiburon*, supra at 260. See also *Penn Central*.

Although many commentators have written about investment-backed expectations and the other factors

---

U.S. 470, 493 et seq.; *Hodel v. Irving*, 481 U.S. 704, 715 (1987); *Nollan*, 483 U.S. at 833, fn 2.

mentioned in the leading regulatory takings cases,[16] none have been able to discern a consistent definitional framework sufficient to place owners and regulators on notice of the consequences of their actions.

The appellate court, in this case, stated the test as "... a private landowner is entitled to compensation when a land use regulation either does not substantially advance a legitimate public purpose or deprives the landowner of 'all uses' (emphasis added) of the property."[17] citing W. Falik and A. Shimko, *The Takings News: The Supreme Court Forges a New Direction in Land Use Jurisprudence*, 23 Real Prop., Prob. & Tr. J. 1.

If this Court does not hear this case, then the law in California will be that a regulatory taking does not exist

---

[16]*See, e.g.*, Rose-Ackerman, *Against Ad Hocery: A Commentary on Michelman*, 88 Colum. L. Rev. 1697 (1988) (arguing that the uncertainty created by ad hoc inquiry is detrimental to the real estate community and the economy as a whole); Epstein, *An Outline of Takings*, 41 U. Miami L. Rev. 3 (1986); Kmiec, *The Original Understanding of the Taking Clause is Neither Weak nor Obtuse*, 88 Colum. L. Rev. 1630 (1988); Mandelker, *Investment-Backed Expectations: Is There a Taking?*, 31 J. of Urb. and Contemp. L. 3 (1987) (concluding that the test may as well be ignored); Michelman, *Takings, 1987*, 88 Colum. L. Rev. 1600 (1988)

[17]The appellate court did enunciate the test as set forth in *Keystone* as denial of "economically viable use," however, its analysis was based on "all uses."

unless all use of property is destroyed.[18] The appellate court, as a matter of fact[19] determined that the Church was not denied all use of its property, based on the fact the Church maintained a campground, however, it operated a camp, not just a campground. At this camp were buildings to serve the needs of all its parishioners, irrespective of age or physical ability.

The appellate court, insensitive to the range of uses, held that because "camping" could still be possible (albeit very rustic camping) there was some use to the property and no taking occurred. The appellate court acknowledged that these sorts of uses would have meant little to another type of landowner, but not to the Church because it operates a campground, so uses of value to that purpose remained available after the moratorium went into effect.

Had there been a trial, permitting a more accurate and expanded record for analysis, the court may have reached a different conclusion.

The Church has been denied one of the basic rights inherent in any theory of property, the ability to make improvements and utilize land beyond its natural state. By any standard, either looking at the beneficial use of

---

[18]The standard, it seems, is economically viable use, not all or reasonable use. Still confusing for private property owners and planners alike is what constitutes economically viable use.

[19]As stated by Petitioner, the appellate court did not remand the case for trial. C.A.R. is of the opinion that a trial should have been held in order for a full exposition of all the facts.

development which the government has taken away, or looking to what the owner has left - the ability to pitch tents - the Church has been substantially deprived of vested property rights. In *San Diego Gas*, Justice Brennan noted in his dissent that "[f]rom the property owner's point of view, it may matter little whether his land is condemned or flooded, or whether it is restricted by regulation to use in its natural state, if the effect in both cases is to deprive him of all beneficial use of it." *Id.* at 652. Requiring the Church to keep the land in its natural state effectively denies it all beneficial use of the property.

Additionally, in his *Penn Central* dissent, now Chief Justice Rehnquist rejected the contention that a taking only occurs when the property owner is denied all reasonable return on his property. 438 U.S. at 149. Justice Rehnquist also noted that "[a] taking does not become a noncompensable exercise of police power simply because the government in its grace allows the owner some 'reasonable' use of his property." *Id.* at 149 (emphasis added).

This Court's assistance by better defining "economically viable use" and rejecting the "all use" standard is needed.

CONCLUSION

C.A.R. is of the opinion further guidance on the definition of a regulatory taking is needed from this Court. It is believed that this case is the proper vehicle for that guidance. We urge the Court to take this case.

The California appellate court attempted to thoughtfully apply the "guideposts" this Court has provided for analysis of regulatory takings. The untenable result of its analysis demonstrates the need for this Court to grant Petitioner's request.

DATED: Dec. 20, 1989

Respectfully submitted,
William M. Pfeiffer, Vice President and General Counsel
Judith K. Herzberg, Senior Counsel

By: Judith K. Herzberg
Judith K. Herzberg

No. 89-826

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

First English Evangelical Lutheran Church of Glendale,
Petitioner,
vs.
County of Los Angeles, California,
Respondent.

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Esiquia Gonzales, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business address is 3550 Wilshire Boulevard, Suite 916, Los Angeles, California 90010. On this date, I served the within BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

MICHAEL M. BERGER, ESQ.
FADEM, BERGER & NORTON
Suite 900
12424 Wilshire Boulevard
Los Angeles, CA 90025

JACK R. WHITE, ESQ.
HILL, FARRER & BURRILL
35th Floor, Union Bank Square
445 South Figueroa Street
Los Angeles, CA 90071-1666

That affiant makes this service, for WILLIAM M. PFEIFFER, Counsel of Record for California Association of Realtors®, Amicus Curiae herein, and that to the best of my knowledge all the persons required to be served in said action have been served.

Esiquia Gonzales

On December 21, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Esiquia Gonzales, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Witness my hand and official seal.

OFFICIAL SEAL
Theodore Matsuo Wilden
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires NOV 30, 1990

Theodore M. Wilden
Notary Public in and for
said county and state